THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.28226 OF 2005

DATED:3.1.2006

Between:

Varadharaja Nagar Development Society

Rep. by its Secretary, S.Chandrasekhar Raju

S/o.Narasa Raju,

R/o.6-1-159, Varadaraja nagar,

Tirupathi, Chittoor District

…Petitioner

And

Tirupathi Municipality, Chittoor District

Represented by its Commissioner and another

…Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.28226 OF 2006

ORDER:

Varadharaja Nagar Development Society ('the Society', for brevity) seeks a Writ of Mandamus declaring the building permission dt.24.7.2004 issued by first respondent to second respondent for construction of residential building as illegal and arbitrary and consequently seeks a direction to the first respondent to withdraw the approval accorded to second respondent.

It is the case of the petitioner society that the second respondent filed a suit being O.S.No.219 of 1995 on the file of the Court of Principal Senior Civil Judge, Tirupathi,

against the members of the society seeking permanent injunction in respect of the land covered by sale deed dt.20.11.1993. The suit was dismissed on 3.1.2003. The appeal being A.S.No.40 of 2003 filed by the second respondent on the file of the Court of V Additional District Judge, Tirupathi, was pending. In the meanwhile, it appears, the second respondent approached the first respondent for building permission, which was granted.

After hearing the learned counsel for the petitioner and the learned Standing Counsel for respondent Municipality, this Court is not able to accept the Writ Petition for two reasons. Admittedly, there has been a litigation between petitioner and second respondent which is pending at the stage of appeal on the file of the Court of V Additional District Judge, Tirupathi, and therefore nothing prevents the petitioner to approach the said Court and obtain appropriate prohibitory orders against second respondent from proceeding with the construction. Secondly, even according to the petitioner, second respondent was accorded building permission by Tirupathi Municipality about eighteen months age and this Writ Petition is filed on 28.12.2005 without properly explaining the delay and laches. By now, in all probability, the second respondent might have completed the construction. Therefore, subject to result of the appeal pending on the file of the Court of V Additional District Judge, Tirupathi, it shall be open to the first respondent to take appropriate action in accordance with law. In this Writ Petition, no relief can be granted to the petitioner as prayed for.

The Writ Petition with the above observations is accordingly dismissed.

_____

(V.V.S.RAO, J)

3.1.2006

bnr